



**THE ATTORNEY GENERAL
OF TEXAS**

April 21, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. James L. Pledger
Commissioner
Texas Savings and Loan Department
2601 North Lamar, Suite 201
Austin, Texas 78705

LO-89-37

Dear Mr. Pledger:

You ask the following questions relative to a liquidating agent appointed under article 852a, section 8.09, V.T.C.S.:

Do a State Liquidating Agent's duties and responsibilities run to the Commissioner, the Texas Savings and Loan Department and the State of Texas?

Does a State Liquidating Agent owe a fiduciary or any other duty or responsibility to the depositors and creditors of the association in liquidation, independent of any duty he owes to the Commissioner, the Department or the State?

If so, does a State Liquidating Agent have a conflict of interest when actions taken in the discharge of his duties and responsibilities to the depositors and creditors will be adversarial or contrary to the interests of the Commissioner, the Texas Savings and Loan Department or the State of Texas?

If the Liquidating Agent does have a conflict of interest, how should that conflict be resolved?

Is a State Liquidating Agent a proper party plaintiff in a lawsuit against the State of Texas or the Texas Savings and Loan Department and, if not, may he prepare documents, give advice, or otherwise provide assistance and direction to those persons who are proper parties?

In support of your questions, you state that a certain savings and loan association was placed in liquidation in 1988, and because of prior involvement with the association, you delegated authority to supervise the liquidation to a deputy commissioner.¹ The questions arise because the liquidating agent believes that the association may have a claim against the state and the Savings and Loan Department for alleged action or inaction on the part of the department in its regulation and supervision of the association.

The liquidating agent was appointed under the provisions of article 852a, section 8.09, V.T.C.S., which reads, in pertinent part, as follows:

(b) If the commissioner finds that the association cannot be rehabilitated and that it is in the public interest and the best interest of the savings account holders and creditors of the association that it be closed and its assets liquidated, the commissioner may issue an order of liquidation appointing a liquidating agent and dissolving the association. The corporate existence of the association continues for three years after the day the order of liquidation is issued for the purpose of adjusting and settling claims not disposed of during the liquidation. If necessary, the commissioner may appoint a special liquidating agent for this purpose at the completion of the liquidation.

(c) [This subsection lists various duties of the liquidating agent to be performed under the supervision of the commissioner.]

We believe that the legislative intent behind section 8.09 was to designate the commissioner as statutory receiver for a savings and loan association on his determination that the association cannot be rehabilitated. This form of statutory receivership is an administrative alternative to an expensive and cumbersome judicially appointed receivership. See Farmers State Bank & Trust Co. v. Brady, 152 S.W.2d 729 (Tex. 1941).

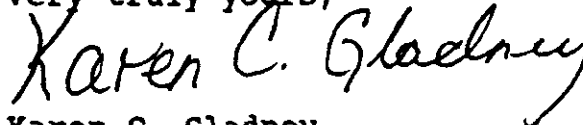
1. You do not ask about and we do not consider the commissioner's authority to delegate the supervision of a savings and loan liquidation.

While we have been unable to find a legal interpretation of the duties of a liquidating agent appointed under section 8.09, the plain terms of the statute and our prior Attorney General Opinion JM-525 (1986) require a liquidating agent to act as an agent of the commissioner. The appointment of a liquidating agent is a matter of discretion of the commissioner. V.T.C.S. art. 852a, § 8.09(b). All of the duties assigned to the liquidating agent are to be done "[u]nder the supervision of the commissioner." V.T.C.S. art. 852a, § 8.09(c). The commissioner may remove a liquidating agent with or without cause and appoint another. V.T.C.S. art. 852a, § 8.10.

Therefore, we answer your questions as follows:

A liquidating agent's duties and responsibilities run to the commissioner, the department and the state. The duty that a liquidating agent owes to the depositors and creditors of an association in liquidation is dependent on his duty to the commissioner. In light of our response to your second question, it is unnecessary to answer your third and fourth questions. Further, in regard to your fifth question, the liquidating agent acts under the supervision of the commissioner, and it seems highly unlikely to us that the commissioner would direct the liquidating agent to sue the department in his own name or on behalf of association creditors and depositors.

Very truly yours,



Karen C. Gladney
Assistant Attorney General
Opinion Committee

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Letter Opinion Section

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